We are of the view that there is no validity in the respondent's contention as it cannot be said that the Industrial Court acted in excess of the jurisdiction bearing in mind, firstly, that the retrospective date of the award is not in breach of or inconsistent with s 30(7) of the Act which reads:

> 30(7) An award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award;
>
> Provided that the retrospective date of the award may not, except in the case of a decision of the court under section 33 or an order of the court under section 56(2)(c) or an award of the court for the reinstatement of a workman on a reference to it in respect of the dismissal of a workman, be earlier than six months from the date on which the dispute was referred to the court.

Secondly, it was the court's function to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form and above all the fact that the parties had agreed to refer the dispute several months earlier.

For these reasons, we see no ground whatsoever for the court below to interfere with the award made by the Industrial Court. The order of the High Court is therefore set aside and substituted therefor an order that the application be dismissed with costs. The Industrial Court award is reinstated. The deposit shall be refunded to the appellant.

Order accordingly.

Solicitors: *Jayasuriya Kah & Co; Hj Mohd Noor, Dr Yaccob & Ismail.*

Reported by *Prof Ahmad Ibrahim*

Lorraine Phylis Cohen & Anor v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 67 OF 1987
LEE HUN HOE CJ (BORNEO), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
27 MARCH AND 24 APRIL 1989

Criminal Procedure – Written judgment delivered by judge of High Court – Whether learned judge can supplement the first judgment by delivering a second judgment or grounds of decision – Criminal Procedure Code (FMS Cap 6), s 278 – Rules of the Supreme Court 1980, r 105(1)(d) – Courts of Judicature Act 1964, s 52(1)

The applicants in this case had been convicted on charges for trafficking in dangerous drugs. At the conclusion of the trial on 1 September 1987, the first applicant was sentenced to death and the second applicant was sentenced to life imprisonment plus six strokes of the rotan. The learned trial judge handed down a 15-page judgment on 1 September 1987 which was dated and signed. Some 15 months later, he purported to hand down another judgment dated 10 December 1988. The applicants applied for an order that the judgment dated 1 September 1987 be the judgment to be included in the record of appeal and not the grounds dated 10 December 1988.

Held, granting the application:

Since there was already a written judgment signed and delivered on 1 September 1987, no second written judgment or grounds of decision could be delivered subsequently to supplement the first judgment. It is not competent for the learned judge to supplement the first judgment by delivering a second judgment or grounds of decision.

Cases referred to

1 *Nathan* v *PP* [1972] 2 MLJ 101 (folld)
2 *Ankur Nath Ganguli* v *PP* [1956] MLJ 206 (folld)

Legislation referred to

Courts of Judicature Act 1964 s 52(1)
Criminal Procedure Code (FMS Cap 6) s 278
Rules of the Supreme Court 1980 r 105(1)(d)

Appeal from: Criminal Trial Nos 58-8, 58-9/1985 (High Court, Penang)

Karpal Singh for the applicants.
Gooi Soon Seng (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Lee Hun Hoe CJ (Borneo) (delivering the judgment of the court): We granted the application of the applicants for an order that the judgment dated 1 September 1987 delivered by Dzaiddin J be the judgment to be included in the record of appeal and not his grounds of judgment dated 10 December 1988. We stated that we would give our reasons later because of the importance of the issue involved. We do so now.

The two applicants are mother and son. Two charges were preferred against them for trafficking in dangerous drugs in Penang, contrary to s 39B(1)(a) and punishable under s 39(B)(2) of the Dangerous Drugs Act 1952. At the conclusion of the trial on 1 September 1987 the first applicant was sentenced to death and the second applicant was sentenced to life imprisonment plus six strokes of the rotan.

It is not in dispute that the learned judge handed down a 15-page judgment on 1 September 1987 which was dated and signed. Some 15 months later, he purported to hand down another grounds of judgment dated 10 December 1988.

Having filed their appeal the applicants wrote to the Senior Assistant Registrar, High Court, Penang for notes of proceedings and grounds of judgment. On 14 February 1989 the Senior Assistant Registrar stated, inter alia, that:

> Mr Justice Datuk Mohamed Dzaiddin had only given an 'oral written judgment' without stating his grounds of judgment which meant the learned judge had only read his 'written judgment' in open court without stating the grounds of his said decision after which he prepared his 'grounds of judgment' in writing.

The contention of the applicants is that the learned judge cannot deliver a second judgment having written, dated and signed the first judgment dated 1 September 1987.

The relevant part of s 52(1) of the Courts of Judicature Act 1964 provides:

> When a notice of appeal has been filed the judge by whom the decision was given shall, if he has not already written his judgment, record in writing the grounds of his decision, and the written judgment or grounds of decision shall form part of the record of the proceedings....

The significance of the words 'if he has not already written his judgment' becomes apparent. In Chapter Four under the heading of 'Criminal Appeals' of the Rules of the Supreme Court 1980, r 105(1)(d) states:

> As soon as practicable after the filing of a notice of appeal in his registry the Registrar of the High Court shall forward to the Registrar of the Court at Kuala Lumpur particulars of the appellant's trial in the Form 9 in the First Schedule to the rules together with seven copies of the following papers:
> (a) ...
> (b) ...
> (c) ...
> (d) where the trial has been by a judge alone any written judgment delivered by the trial judge or where no such written judgment has been delivered a statement in writing by the trial judge of the grounds of his decision;

Rule 105(1)(d) repeats substantially what was stated in s 52(1) of the Courts of Judicature Act 1964.

Since there was already a written judgment, signed and delivered on 1 September 1987 no second written judgment or grounds of decision could be delivered subsequently to supplement the first judgment. We do not think it is competent for the learned judge to supplement the first judgment by delivering a second judgment or grounds of decision. This is clearly against fundamental principle as is normally understood. In *Nathan* v *PP*[1] it was held, inter alia, that the only judgment for consideration by the court was the signed copy of the grounds of decision. It is not competent for the court to supplement the signed grounds of decision.

This general principle was in fact laid down some 23 years ago by a powerful Court of Appeal in *Ankur Nath Ganguli* v *PP*[2] comprising Mathew CJ, Whyatt CJ (S) and Good J. In that case reference was made to sub-s (1) of s 21 of the Courts Ordinance 1948 which reads, inter alia, that:

> When a notice of appeal has been lodged the judge by whom the appellant was convicted shall, if he has not already written his judgment, record in writing the grounds of his decision, and such written judgment or grounds of decision shall form part of the record of the proceedings...

After referring to the said provision, Mathew CJ stated in his judgment:

> This means clearly that if reasons for convicting an accused person have not been given and recorded, a trial judge may record in writing the grounds of his decision and those grounds shall form part of the record. In this case the learned trial judge gave reasons for convicting the appellant, and his judgment was taken down by his secretary and was reduced to a written form. This not-too-happily phrased sub-section means, in our view, that if a trial judge gives no reasons which are recorded for convicting an accused person, then and then only he can on notice of appeal being given write his grounds of decision which shall form part of the record. The sub-section permits only of a written judgment or grounds of decision being included in the record, and this must be either the one or the other, not both. We therefore, hold that what has been termed an addition to the learned trial judge's oral judgment cannot form part of the record, and we can have no regard to it....

We support the sentiments expressed therein since the said provision is similar in substance to s 52(1) of the Courts of Judicature Act 1964. We consider it wrong in principle to allow a judge to supplement his original written judgment by a second judgment. If we allow this what is there to prevent a third or a fourth judgment to supplement an earlier judgment.

The respondent sought to distinguish *Ankur Nath Ganguli's* case.[2] He pointed out that the first judgment of 1 September 1987 dealt with the defence case only but not the prosecution's case. Hence, he contended that the second judgment of 10 December 1988 should be included in the record of appeal.

Once the learned judge delivered his judgment in writing, dated and signed it, such judgment could not be altered or supplemented by another judgment. Section 278 of the Criminal Procedure Code does not assist us. Section 278 provides:

> No court, other than a High Court, having once recorded its judgment, shall alter or review the same; provided that a clerical error may be rectified at any time, and that any other mistake may be rectified at any time before the court rises for the day.

The High Court may be able to alter or review its judgment before the court rises for the day but not when the second judgment was written some 15 months after the first judgment was delivered. We do not think in such a situation s 278 confers jurisdiction on a judge to deliver a second jugdment to supplement a first judgment. Section 4 of the Courts of Judicature Act 1964 states unequivocably that:

> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

Section 278 of the Criminal Procedure Code falls within 'any other written law' and could not override any provision of the Courts of Judicature Act 1964.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*